

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7136 of 1998

to

FIRST APPEAL No 7165 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KISHORSINHJI AJITSINHJI THAKOR

Appearance:

MR SJ DAVE, Ld. AGP for Appellants
MR DF AMIN for Opponents

CORAM : MR.JUSTICE M.H.KADRI
and

Date of decision: 23/03/2000

COMMON ORAL JUDGEMENT {PER: KADRI, J.}

1. The appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated February 12, 1998, passed by the learned Extra Assistant Judge, Panchmahals at Godhra, in Land Acquisition Reference Cases No.17/85, 19/86, 22/85, 23/85, 26/85, 27/85, 40/85, 45/85, 48/85, 53/85, 57/85, 64/85, 66/85, 75/85, 77/85, 83/85, 87/85, 88/85, 92/85, 94/85, 95/85, 110/85, 128/85, 137/85, 138/85, 139/85, 147/85, 151/85, 154/85, 180/86 and 221/86.

2. The Executive Engineer, Panam Project Division, Godhra, made a proposal to the State Government vide his letter No.C.B./8199/21 dated November 29, 1972, for the acquisition of agricultural lands of village Bhuvar, Tal.Godhra, for the public purpose of Panam Project. The State Government being satisfied by the said proposal issued notification under Section 4(1) of the Act, which came to be published in the Government Gazette on March 8, 1973, which was modified on June 28, 1973. After following the usual procedure under the Act, declaration under Section 6 of the Act was made on January 9, 1975. The persons interested were served with the notices under Section 9(3)(4) of the Act. The Land Acquisition Officer on the basis of material placed before him, made his award on March 9, 1976, and offered compensation at the rate of Rs.100/- per Acre for Jarayat land of bad quality, Rs.350/- per Acre for Jarayat land of inferior quality, Rs.750/- per Acre for Jarayat land of good quality, Rs.850/- per Acre for developed Jarayat land of new Kyari land and Rs.40/- per Acre for Kharaba land. The respondents-claimants being dissatisfied with the compensation offered by the Land Acquisition Officer, had filed applications under Section 18 of the Act, requiring the Land Acquisition Officer to refer their applications to the District Court, Panchmahals at Godhra, for determination of market value of the acquired lands. The applications filed by the respondents-claimants were referred by the Land Acquisition Officer to the District Court, Panchmahals at Godhra, which came to be numbered as Land Acquisition References as mentioned earlier.

3. The applications filed by the respondents were resisted by the opponents Nos.2 to 59, who claim to be

the tenant of the acquired lands inter-alia contending that they had become protected tenants after coming into force of the Talukdari Tenure Abolition Act. They claimed enhanced compensation of their acquired lands situated at village Bhuvar. On the basis of the rival assertions of the parties, the reference court raised issues at Exh.7. In support of the claim for enhancement of compensation, the claimants examined Mahendrasinh Thakatsinh Chauhan at Exh.21. Vaghabhai Ragabhai at Exh.88 was examined on behalf of opponents Nos.2 to 59. The appellants did not examine any witness. The claimants also produced documentary evidence such as entries of revenue record and previous award passed in Land Reference Case No.49 of 1985 at Exh.91 and certified copy of the previous award in Land Reference Case No.82/95 at Exh.93. The reference court on the appreciation of oral as well as documentary evidence mainly relied on previous award of the reference court produced at Exh.91 in Land Ref.Case No.49/85 which related to the acquired lands of same village Bhuvar wherein notification under section 4(1) of the Act was issued on March 8, 1973, had determined the market value of the acquired lands of the same village at the rate Rs.4,500/- per Acre for Kyari lands, Rs.3,000/- per Acre for Jarayat lands and Rs.400/- per Acre for Kharaba lands. Award Exh.91 was challenged in this High Court by filing First Appeals No.1494/93 to 1594/93, which came to be dismissed on March 4, 1994, and determination of market value of the acquired lands by the reference court was confirmed. Thus, previous award Exh.91 had become final. It is not brought to our notice that the said award was challenged in this High Court. The Reference Court placing reliance on previous award Exh.91 determined market value of the present acquired lands at the rate of Rs.3000/- per acre for Jarayat land, Rs.4500/- per acre for Kyari land and Rs.400/- per acre for Kharaba land, which is challenged by the appellants by filing these appeals.

4. Learned counsel for the Government Mr.S.J.Dave, has taken us through the entire record and proceedings of the reference court and submitted that the amount of compensation awarded by the reference court was excessive and the previous award Exh.91 were not comparable and relevant for determination of market value of the present acquired lands. Counsel for the Government therefore submitted that these appeals deserves to be admitted and the compensation awarded by the reference court be reduced accordingly.

5. We are not impressed by any of the contentions

advanced by the learned counsel for the Government. It is settled legal principle that previous award in absence of any other evidence can be relied on by the reference court if the lands of previous award are comparable with the acquired lands which were acquired subsequently. Lands of previous award Exh.91 and the present acquired lands are situated in the same village Bhuvar and the notification under Section 4(1) of the Act was also issued on the same day and, therefore, we are of the view that, the previous award Exh.91 in all respects relevant and comparable for determination of market value of the present acquired lands. We do not find any error committed by the reference court in relying on the previous award Exh.91 for determination of market value of the present acquired lands. It is also required to be mentioned that agricultural lands of village Bhuvar were also acquired for the same public purpose of Panam project by notification issued under Section 4(1) of the Act on March 8, 1973, and the Reference Court had determined compensation of the acquired lands at the rate of Rs.4,500/- per Acre for Kyari lands, Rs.3,000/- per Acre for Jarayat lands and Rs.400/- per Acre for Kharaba lands. Thus, the lands acquired in the present references which are the subject matter of these first appeals are also situated in village Bhuvar, and are also acquired for the same purpose viz. Panam Project. It is not brought to our notice that determination of market value of the acquired lands of previous award Exhs.91 and 93 were in any way decrease or increase by the higher forum. Therefore, in our opinion, previous award Exhs.91 and 93 are relevant and comparable for determination of market value of the present acquired lands of the same village. We do not find any reason to interfere with the determination of market value of the acquired lands of village Bhuvar.

6. As a result of the foregoing discussion, we do not find any merit in these appeals. Hence, the appeals fail and are dismissed with no order as to costs. The market value of the present acquired lands of village Bhuvar determined by the reference court at the rate of Rs.4,500/- per Acre for Kyari land, Rs.3,000/- per Acre for Jarayat land and Rs.400/- per Acre for Kharaba land is confirmed. The direction with regard to the statutory benefits granted in favour of the respondents-claimants are hereby not disturbed. The respondents original opponents No.2 to 59 of Land Reference Case No.221/86 who claimed to be deemed tenant in respect of acquired lands under the provisions of Bombay Talukdari Abolition Act had challenged the finding against them by filing First Appeals nos.5064 and 5065/99, but since those appeals

were withdrawn by learned counsel Mr.D.F.Amin with a liberty to approach appropriate Authority to claim deemed tenancy under Talukdari Abolition Act, we do not express any opinion with regard to findings of the Reference Court in that regard.

syed/